



PUBLIC NOTICE

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DA 22-1187
Released: November 10, 2022

**DOMESTIC SECTION 214 APPLICATION GRANTED FOR
THE TRANSFER OF CONTROL OF NICHOLVILLE TELCO LLC AND
SLIC NETWORK SOLUTIONS, INC. TO SDC ATLAS ACQUISITIONCO, LLC**

WC Docket No. 22-309

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by Atlas Connectivity, LLC (Atlas), Nicholville Telco LLC (Nicholville), SLIC Network Solutions, Inc. (SLIC) (Nicholville and SLIC, together, the Licensees), and SDC Atlas AcquisitionCo, LLC (SDC Acquisition or Transferee) (Atlas, the Licensees, and SDC Acquisition, collectively, Applicants),¹ pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting consent to transfer control of the Licensees to SDC Acquisition (the Transaction).²

On September 20, 2022, the Bureau released a Public Notice seeking comment on the Application.³ The Bureau did not receive comments or petitions in opposition to the Application.

Applicants and Description of the Transaction

Atlas, a Delaware limited liability and holding company, wholly-owns Nicholville and SLIC, both New York entities.⁴ Nicholville provides service as a rural incumbent LEC in the Nicholville and

¹ See Application of SDC Atlas AcquisitionCo, LLC, Atlas Connectivity, LLC, Nicholville Telco, LLC, and SLIC Network Solutions, Inc., WC Docket No. 22-309 (filed Aug. 22, 2022) (Application). On September 15, 2022 and November 9, 2022, supplements were filed related to the domestic section 214 application. Letter from Todd B. Lantor, Counsel for Atlas and the Licensees, and Tamar E. Finn, Joshua Bobeck, Patricia Cave, Counsel for SDC Acquisition, to Marlene H. Dortch, Secretary, FCC (Sept. 15, 2022) (on file in WC Docket No. 22-309) (September Supplement); Letter from Todd B. Lantor, Counsel for Atlas and the Licensees, to Marlene H. Dortch, Secretary, FCC (Nov. 9, 2022) (on file in WC Docket No. 22-309) (November Supplement). On October 27, 2022, SLIC filed an *ex parte* letter. Letter from Eileen M. Bodamer, Consultant to SLIC Network Solutions, Inc., to Marlene H. Dortch, Secretary, FCC (Oct. 27, 2022) (on file in WC Docket No. 22-309) (October *Ex Parte* Letter). Applicants also filed an application for the transfer of authorizations associated with international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

³ See *Domestic Section 214 Application Filed for the Transfer of Control of Nicholville Telco LLC, and SLIC Network Solutions, Inc. to SDC Atlas AcquisitionCo, LLC*, WC Docket No. 22-309, Public Notice, DA 22-982 (WCB Sept. 20, 2022) (*Public Notice*).

⁴ Application at 3. On September 26, 2022, the Bureau granted a domestic section 214 application for Atlas to acquire Westelcom Communications, Inc., which wholly-owns Westelcom Network, Inc., (Westelcom), a competitive local exchange carrier (LEC) in the counties of Jefferson, Lewis, St. Lawrence, Franklin, Clinton, and Essex in New York. *Notice of Domestic Section 214 Authorizations Granted*, WC Docket No. 22-291, Public Notice, DA 22-1006 (WCB 2022); *Domestic Section 214 Application Filed for the Transfer of Westelcom Communications, Inc. to Atlas Connectivity, LLC*, WC Docket No. 22-291, Public Notice, DA 22-894 (WCB 2022). Applicants state that Atlas will acquire Westelcom prior to SDC Acquisition acquiring Atlas such that Atlas will

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Winthrop exchanges in upstate New York.⁵ Nicholville is also an Eligible Telecommunications Carrier (ETC) in New York.⁶ SLIC provides service as a competitive LEC in the North Country area of New York, and also holds an ETC designation in New York.⁷ SLIC is authorized to receive Connect America Fund (CAF) Phase II Auction 903 support in New York in the total amount of \$13,695,349.⁸ On April 15, 2022, the Bureau authorized SLIC to receive \$978,722 of Rural Digital Opportunity Fund (RDOF) Auction 904 support to provide service to an estimated 3,660 locations in New York.⁹

SDC Acquisition, a Delaware limited liability company formed for the purposes of the Transaction, is indirectly and wholly-owned by SDC Digital Infrastructure Opportunity Fund III, L.P., a Delaware investment fund that is ultimately controlled by an affiliate of SDC Capital Partners, LLC, a New York based investment firm with U.S. ownership.¹⁰ Applicants state that other than what is disclosed in the Application, SDC Acquisition does not hold a 10% or greater interest in any other provider of domestic telecommunications services.¹¹

Pursuant to terms of the Transaction, Atlas will become a direct, wholly-owned subsidiary of SDC Acquisition, and Nicholville and SLIC will become indirect, wholly-owned subsidiaries of SDC Acquisition.¹²

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become a direct, wholly-owned subsidiary of SDC Acquisition, and Nicholville, SLIC, and Westelcom will become indirect wholly-owned subsidiaries of SDC Acquisition. *See* November Supplement at 1; *see also* Application at 13-14 (describing the subsidiaries owned by Atlas and stating that Atlas is acquiring Westelcom in a pending transaction (which the Commission has already approved)).

⁵ Application at 3 and 12. Applicants state that Nicholville receives fixed high-cost universal service fund (USF) support through the Revised Alternative Connect America Model (ACAM-I) mechanism, as well as Intercarrier Compensation (ICC) support. *Id.*; *see* Universal Service Administrative Co., Tools, “ACAM, ACAM II and CAF BLS Buildout Requirements,” <https://www.usac.org/high-cost/resources/tools/>. Applicants further state that Nicholville was a participating provider in the Emergency Broadband Benefit (EBB) Program and is a participating provider in the Affordable Connectivity Program (ACP) and also provides Lifeline services. *Id.* at 12.

⁶ Application at 3.

⁷ *Id.* at 3 and 12. Applicants state that SLIC was a participating provider in the EBB program, is a participating provider in the ACP, and also provides Lifeline services. *Id.* at 12.

⁸ *Id.* SLIC receives CAF-II support pursuant to a waiver granted by the Commission to permit use of CAF-II support in CAF-eligible areas in New York in coordination with the New NY Broadband Program. *See Connect America Fund Phase II Support Authorized for Five New York Winning Bidders*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 6094 Attach. A (WCB 2019) (*CAF Phase II 2019 Public Notice*) (authorizing SLIC to receive \$11,296,264); *Connect America Fund Phase II Auction Support Authorized for a New York Winning Bidder*, WC Docket No. 10-90, Public Notice, 36 FCC Rcd 236 (WCB 2021) (*CAF Phase II 2021 Public Notice*) (authorizing SLIC to receive an additional \$2,399,085).

⁹ Application at 4, 12; *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Public Notice, DA 22-402, Attach. A (Authorized Long-Form Applicants and Winning Bids) (WCB 2022) (*RDOF Public Notice*).

¹⁰ Application at 2; *Public Notice* at 2. Applicants provide post-ownership charts and information for the Licensees. Application at Exh. A (Current, Post-Preferred Unit Purchase, and Post-Transaction Corporate Ownership Structure Charts) and Exh. B (Post-Transaction Ownership of the Licensees).

¹¹ Application at 15. Applicants state that SDC Acquisition is affiliated with the following two competitive LECs: ALLO Communications LLC, providing service in Nebraska and Colorado, and Fatbeam LLC, providing service in Arizona, Nevada, New Mexico, Oregon, Washington, and Idaho. *Id.* at 14-15.

¹² Application at 4-5. Applicants provide further details about the Transaction, including about a series of transactions contemplated in an Equity Interests Purchase Agreement (Agreement), dated July 26, 2022, pursuant to which, “upon signing of the Agreement, Atlas issued to SDC Acquisition, and SDC Acquisition purchased from Atlas, 100,000 non-voting Series D Preferred Units of Atlas accompanied by certain limited minority investor

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Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.¹³

Discussion

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹⁴ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁵ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.¹⁶

We find that there are no potential public interest harms identified in the record. First, the Transaction will not result in a significant reduction of competition. The two competitive LECs that SDC Acquisition is affiliated with do not provide service in New York, and there will thus be no physical overlap or reduction in service providers in any markets as a result of the Transaction.¹⁷ Further, Applicants state that, because the Transaction is occurring at the holding company level, it is “intended to be transparent to customers” and will have no impact on Licensees’ day-to-day operations and service offerings.¹⁸ Applicants state further that Licensees will continue to provide communications offerings to

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protections pending receipt of required regulatory approvals (the Initial Preferred Unit Purchase). During the period between signing and closing, Atlas may issue, and SDC Acquisition may purchase from Atlas, an additional 300,000 non-voting Series D Preferred Units (the ‘Subsequent Preferred Unit Purchases’ together with the Initial Preferred Unit Purchase, the ‘Preferred Unit Purchase’), for a total of up to 400,000 non-voting Series D Preferred Units. Following receipt of the required regulatory approvals, including the Commission’s approval, SDC Acquisition will acquire all of the outstanding equity interests in Atlas and the Series D Preferred Units will convert into common units of Atlas.” *Id.*

¹³ *Id.* at 6-7.

¹⁴ See, e.g., *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, FCC 21-121, at 8, para. 21 (Nov. 22, 2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

¹⁵ See *Verizon-TracFone Order* at 8, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

¹⁶ See *Verizon-TracFone Order* at 8, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

¹⁷ See *supra* note 11; see also Application at 7.

¹⁸ Application at 7.

their customers at the same rates, terms, and conditions, as governed by existing contracts, as applicable,¹⁹ and we thus expect no potential harm to existing customers to result from the Transaction.

Second, Licensees remain managerially, technically, and financially obligated to meet all public interest and performance obligations associated with the receipt of CAF Phase II and RDOF funding in accordance with the Commission's pre-transaction approval of its qualifications, and we expect that the Transaction will not negatively impact these obligations. Applicants affirm that they do not expect changes with respect to Licensees' management and technology following completion of the Transaction, that "there are no plans to change SLIC's Connect America Fund Phase II ('CAF-II') or Rural Digital Opportunity Fund ('RDOF') deployment plans following completion of the Transaction," and that "Applicants likewise intend that SLIC will continue to meet its CAF-II and RDOF obligations."²⁰ Addressing financial obligations, Applicants assert that the Transaction will provide "Atlas with additional capital to invest in fiber deployment for the provision of advanced high-speed communications services" and, with regard to the SLIC's CAF II and RDOF program, Applicants state that the Transaction "will provide Licensees and their affiliates with access to additional financial and operational expertise and resources of Transferee to support Licensees' ability to meet their high-cost universal service obligations."²¹ Applicants confirm that Nicholville does not have third-party debt and will not incur debt following completion of the Transaction, and that existing debt of Atlas and SLIC will be paid off at closing and subsequently may be replaced by new debt facilities.²² SDC Acquisition as the transferee has committed to meet all buildout and performance obligations and has stated on the record that it will ensure that Atlas, which will be wholly-owned by SDC Acquisition and the direct parent of the Licensees, will also meet all post-transaction obligations, including support recovery obligations, if necessary.²³ Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.²⁴ Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.²⁵ Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.²⁶

Applicants claim that "[t]he Transaction will provide the Licensees and their affiliates with access to the financial and operational expertise and resources of SDC. SDC has substantial experience investing in communications infrastructure companies. The Licensees will benefit from this financial and operational experience and expertise. Transferee will build on the Licensees' existing assets and support investment in new infrastructure, while Licensees will continue to offer high-quality services to customers."²⁷ Applicants further claim the Transaction will benefit the customers of the Licensees by providing Atlas with additional capital to invest in fiber deployment.²⁸ Applicants maintain that the

¹⁹ *Id.*

²⁰ September Supplement at 1; October *Ex Parte* Letter at 1.

²¹ September Supplement at 1.

²² *Id.*

²³ *Id.* at 2.

²⁴ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

²⁵ See *id.* at 9237-38, paras. 275-76.

²⁶ See *id.*

²⁷ Application at 6.

²⁸ *Id.*

Transaction “will benefit customers in the territories of the Licensees by bringing more robust fiber-based services to more customers and will bring new jobs to the region as the Licensees will add jobs to support such deployment.”²⁹

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,³⁰ and accelerating private sector deployment of advanced services is one of the aims of the Communications Act.³¹ In light of the Applicants’ commitments to meet all of Licensees’ federal high cost funding obligations³² and the fact that Applicants are prepared to devote additional capital to accelerate facilities-based service offerings,³³ we find it likely that the Transaction would result in some public interest benefits. Absent any potential harms, and considering that the Transaction is likely to yield some benefits, we find, on balance, that the Transaction serves the public interest.

Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice, subject to Applicants’ compliance with all applicable obligations.³⁴

Pursuant to section 1.103 of the Commission’s rules, 47 C.F.R. § 1.103, the grant is effective upon release of this Public Notice.³⁵ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission’s rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Gregory Kwan, Wireline Competition Bureau, Competition Policy Division, (202) 418-1191.

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²⁹ *Id.* at 6-7.

³⁰ *See, e.g., AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

³¹ *See Verizon-TracFone Order* at 9, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services”)).

³² Application at 7; September Supplement at 1-2.

³³ Application at 6-7; September Supplement at 1-2.

³⁴ *See, e.g., CAF Phase II 2019 Public Notice*, 34 FCC Rcd at 6094-99; *CAF Phase II 2021 Public Notice*, 36 FCC Rcd at 237-41; *RDOF Public Notice* at 1-9 (all listing a non-comprehensive summary of various obligations of authorized support recipients).

³⁵ We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 22-309 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.